

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *eg* D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS J. DAVIS,

Defendant.

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X

Cv. No. 05-2137-M1/P ✓
Cr. No. 03-20173-M1

ORDER DIRECTING UNITED STATES TO RESPOND
ORDER OF REFERENCE FOR APPOINTMENT OF COUNSEL
AND
ORDER DENYING MOTION TO EXPEDITE AS MOOT

Defendant Dennis J. Davis, an inmate at the Federal Prison Camp (FPC) in Pollock, Louisiana, has filed a motion pursuant to 28 U.S.C. § 2255 seeking to set aside his conviction for violating 18 U.S.C. § 922(g).

On May 13, 2003, a federal grand jury indicted Davis on one count of possessing a firearm after the conviction of a felony, in violation of 18 U.S.C. § 922(g). On October 27, 2003, Davis pled guilty pursuant to a plea agreement which provided that the Government would recommend that he receive a reduction for acceptance of responsibility under United States Sentencing Guidelines ("U.S.S.G.") § 3E1.1 and that he be sentenced at the lowest end of the applicable guideline range. On January 27, 2004, the Court conducted a sentencing hearing, determined the applicable guideline range to be seventy to eighty-seven months imprisonment,

and imposed a term of seventy months imprisonment, along with a term of years supervised release. Davis did not appeal.

On February 4, 2005, Davis placed this § 2255 motion in the prison mail system. Davis contends that trial counsel provided ineffective assistance in violation of the Sixth Amendment which rendered his guilty plea involuntary by:

- 1) failing to appeal his sentence as requested;
- 2) failing to challenge the traffic stop and search which led to his arrest; and
- 3) failing to challenge the calculation of the applicable sentencing range under the U.S.S.G.

It is ORDERED that the United States file a response to the remaining issues of the motion, within twenty-three days from the date of this order. As the Court has now reviewed the motion and determined that a response from the United States is necessary, defendant's motion to expedite (docket entry #2) is denied as MOOT.

Pursuant to Rule 8(c) of the Rules Governing Section 2255 Proceedings in the United States District Courts, this case is referred to United States Magistrate Judge Pham for a determination on Davis' eligibility for the appointment of counsel.

The Clerk shall provide a copy of the motion in this cause and this order to the United States Attorney for the Western District of Tennessee.

IT IS SO ORDERED this 11 day of ^{October}~~September~~, 2005.


JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 5 in case 2:05-CV-02137 was distributed by fax, mail, or direct printing on October 11, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT